

Senate File 2155 - Introduced

SENATE FILE _____
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 522)
(SUCCESSOR TO SSB 1097)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to communications made in professional confidence
2 concerning health care, patient access to the patient's
3 medical file, and health care records and providing for fees.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 6482SZ 82
6 rh/rj/5

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1 1 Section 1. Section 622.10, subsection 3, paragraphs a, d,
1 2 and e, Code Supplement 2007, are amended to read as follows:
1 3 a. In a civil action in which the condition of the
1 4 plaintiff in whose favor the prohibition is made is an element
1 5 or factor of the claim or defense of the adverse party or of
1 6 any party claiming through or under the adverse party, the
1 7 adverse party shall make a written request for records
1 8 relating to the condition alleged upon the plaintiff's ~~counsel~~
1 9 attorney for a legally sufficient patient's waiver under
1 10 federal and state law. Upon receipt of a written request, the
1 11 plaintiff shall execute ~~the a legally sufficient~~ patient's
1 12 waiver and release it to the adverse party making the request
1 13 within sixty days of receipt of the written request. The
1 14 patient's waiver may require a physician or surgeon, physician
1 15 assistant, advanced registered nurse practitioner, or mental
1 16 health professional to do all of the following:
1 17 (1) Provide a complete copy of the patient's records
1 18 including, but not limited to, any reports or diagnostic
1 19 imaging relating to the condition alleged.
1 20 (2) Consult with the attorney for the adverse party prior
1 21 to providing testimony regarding the plaintiff's medical
1 22 history and the condition alleged and opinions regarding
1 23 health etiology and prognosis for the condition alleged
1 24 subject to the limitations in ~~paragraph~~ paragraphs "c" and
1 25 "e".
1 26 d. Any physician or surgeon, physician assistant, advanced
1 27 registered nurse practitioner, or mental health professional
1 28 who provides records or consults with the ~~counsel~~ attorney for
1 29 ~~the adverse~~ any party shall be entitled to charge a reasonable
1 30 fee for production of the records, diagnostic imaging, and
1 31 consultation. Any party seeking consultation shall be
1 32 responsible for payment of all charges. ~~The fee fees~~ for
1 33 copies of any records shall ~~be based upon actual cost of~~
1 34 ~~production be as specified in subsection 4A.~~
1 35 e. Defendant's counsel shall provide a written notice to
2 1 plaintiff's ~~counsel~~ attorney in a manner consistent with the
2 2 Iowa rules of civil procedure providing for notice of
2 3 deposition at least ten days prior to any meeting with
2 4 plaintiff's physician or surgeon, physician assistant,
2 5 advanced registered nurse practitioner, or mental health
2 6 professional. Plaintiff's ~~counsel~~ attorney has the right to
2 7 be present at all such meetings, or participate in telephonic
2 8 communication with the physician or surgeon, physician
2 9 assistant, advanced registered nurse practitioner, or mental
2 10 health professional and ~~counsel~~ attorney for the defendant.
2 11 Prior to scheduling any meeting or engaging in any
2 12 communication with the physician or surgeon, physician
2 13 assistant, advanced registered nurse practitioner, or mental
2 14 health professional, attorney for the defendant shall confer
2 15 with plaintiff's attorney to determine a mutually convenient
2 16 date and time for such meeting or telephonic communication.

2 17 Plaintiff's counsel attorney may seek a protective order
2 18 structuring all communication by making application to the
2 19 court at any time.

2 20 Sec. 2. Section 622.10, subsection 4, Code Supplement
2 21 2007, is amended to read as follows:

2 22 4. If an adverse party desires the oral deposition, either
2 23 discovery or evidentiary, of a physician or surgeon, physician
2 24 assistant, advanced registered nurse practitioner, or mental
2 25 health professional to which the prohibition would otherwise
2 26 apply or the stenographer or confidential clerk of a physician
2 27 or surgeon, physician assistant, advanced registered nurse
2 28 practitioner, or mental health professional or desires to call
2 29 a physician or surgeon, physician assistant, advanced
2 30 registered nurse practitioner, or mental health professional
2 31 to which the prohibition would otherwise apply or the
2 32 stenographer or confidential clerk of a physician or surgeon,
2 33 physician assistant, advanced registered nurse practitioner,
2 34 or mental health professional as a witness at the trial of the
2 35 action, the adverse party shall file an application with the
3 1 court for permission to do so. The court upon hearing, which
3 2 shall not be ex parte, shall grant permission unless the court
3 3 finds that the evidence sought does not relate to the

3 4 condition alleged ~~and~~. At the request of any party or at the
3 5 request of the deponent, the court shall fix a reasonable fee
3 6 to be paid to the a physician or surgeon, physician assistant,
3 7 advanced registered nurse practitioner, or mental health
3 8 professional by the party taking the deposition or calling the
3 9 witness.

3 10 Sec. 3. Section 622.10, Code Supplement 2007, is amended
3 11 by adding the following new subsection:

3 12 NEW SUBSECTION. 4A. At any time, upon a written request
3 13 from a patient, a patient's legal representative or attorney,
3 14 or an adverse party pursuant to subsection 3, any provider
3 15 shall provide copies of the requested records or images to the
3 16 requester within thirty days of receipt of the written
3 17 request. The written request shall be accompanied by a
3 18 legally sufficient patient's waiver unless the request is made
3 19 by the patient or the patient's legal representative or
3 20 attorney. The provider shall also produce copies of patient
3 21 records or images contained in the provider's files generated
3 22 by another provider.

3 23 a. The fee charged for the cost of producing the requested
3 24 records or images shall be based upon the actual cost of
3 25 production. If the written request and accompanying patient's
3 26 waiver, if required, authorizes the release of all of the
3 27 patient's records for the requested time period, including
3 28 records relating to the patient's mental health, substance
3 29 abuse, and acquired immune deficiency syndrome=related
3 30 conditions, the amount charged shall not exceed the rates
3 31 established by the workers' compensation commissioner for
3 32 copies of records in workers' compensation cases. In
3 33 addition, a retrieval fee of up to twenty=five dollars per
3 34 request may be charged for up to two requests. If requested,
3 35 the provider shall include an affidavit certifying that the
4 1 records or images produced are true and accurate copies of the
4 2 originals for an additional fee not to exceed ten dollars.

4 3 b. A patient or a patient's legal representative or a
4 4 patient's attorney is entitled to one copy free of charge of
4 5 the patient's complete billing statement, subject only to a
4 6 charge for the actual costs of postage or delivery charges
4 7 incurred in providing the statement. If requested, the
4 8 provider or custodian of the record shall include an affidavit
4 9 certifying the billing statements produced to be true and
4 10 accurate copies of the originals for an additional fee not to
4 11 exceed ten dollars.

4 12 c. Fees charged pursuant to this subsection are not
4 13 subject to a sales or use tax. A provider providing the
4 14 records or images may require payment in advance if an
4 15 itemized statement demanding such is provided to the
4 16 requesting party within fifteen days of the request. Upon a
4 17 timely request for payment in advance, the time for providing
4 18 the records or images shall be extended until the greater of
4 19 thirty days from the date of the original request or ten days
4 20 from the receipt of payment.

4 21 d. If a provider does not provide to the requester all
4 22 records or images encompassed by the request or does not allow
4 23 a patient access to all of the patient's medical records
4 24 encompassed by the patient's request to examine the patient's
4 25 records, the provider shall give written notice to the
4 26 requester or the patient that providing the requested records
4 27 or images would be a violation of the federal Health Insurance

4 28 Portability and Accountability Act of 1996, Pub. L. No.
4 29 104=191.

4 30 e. As used in this subsection:

4 31 (1) "Records" and "images" include electronic media and
4 32 data containing a patient's health or billing information and
4 33 "copies" includes patient records or images provided in
4 34 electronic form, regardless of the form of the originals. If
4 35 consented to by the requesting party, records and images
5 1 produced pursuant to this subsection may be produced on
5 2 electronic media.

5 3 (2) "Provider" means any physician or surgeon, physician
4 4 assistant, advanced registered nurse practitioner, mental
5 5 health professional, hospital, nursing home, or other person,
5 6 entity, facility, or organization that furnishes, bills, or is
5 7 paid for health care in the normal course of business.

5 8 EXPLANATION

5 9 This bill relates to communications made in professional
5 10 confidence concerning health care and health care records and
5 11 provides for fees.

5 12 The bill provides that in a civil action in which the
5 13 health condition of a plaintiff is an element or factor of the
5 14 claim or defense, defendant's attorney and plaintiff's
5 15 attorney shall determine a mutually convenient date and time
5 16 for any meeting or telephonic communication with the physician
5 17 or surgeon, physician assistant, advanced registered nurse
5 18 practitioner, or mental health professional. In addition, the
5 19 bill provides that if an adverse party desires the oral
5 20 deposition, either discovery or evidentiary, of a physician or
5 21 surgeon, physician assistant, advanced registered nurse
5 22 practitioner, or mental health professional, or the
5 23 stenographer or confidential clerk of a physician or surgeon,
5 24 physician assistant, advanced registered nurse practitioner,
5 25 or mental health professional or desires to call a physician
5 26 or surgeon, physician assistant, advanced registered nurse
5 27 practitioner, or mental health professional, or the
5 28 stenographer or confidential clerk of a physician or surgeon,
5 29 physician assistant, advanced registered nurse practitioner,
5 30 or mental health professional as a witness at the trial of the
5 31 civil action, upon request of either party or the person being
5 32 deposed, the court shall fix a reasonable fee to be paid to a
5 33 physician or surgeon, physician assistant, advanced registered
5 34 nurse practitioner, or mental health professional by the party
5 35 taking the deposition or calling the witness.

6 1 The bill provides that at any time, upon a written request
6 2 from a patient, a patient's legal representative or attorney,
6 3 or an adverse party, any provider shall provide copies of the
6 4 requested records or images to the requester within 30 days of
6 5 receipt of the written request. The written request shall
6 6 include a legally sufficient patient's waiver unless the
6 7 request is made by the patient or the patient's
6 8 representative.

6 9 The bill provides that the fee charged for the cost of
6 10 producing the requested records or images shall be based upon
6 11 the actual cost of production. If the written request and
6 12 accompanying patient's waiver, if required, authorizes the
6 13 release of all of the patient's records for the requested time
6 14 period, the amount charged shall not exceed the rates
6 15 established by the workers' compensation commissioner for
6 16 copies of records in workers' compensation cases. In
6 17 addition, a retrieval fee of up to \$25 per request may be
6 18 charged for up to two requests and, if requested, the provider
6 19 shall include an affidavit certifying that the records or
6 20 images produced are true and accurate copies of the originals
6 21 for an additional fee not to exceed \$10.

6 22 The bill provides that a patient or a patient's legal
6 23 representative or a patient's attorney is entitled to one copy
6 24 free of charge of the patient's complete billing statement,
6 25 subject only to a charge for the actual costs of postage or
6 26 delivery charges incurred in providing the statement. If
6 27 requested, the provider or custodian of the record shall
6 28 include an affidavit certifying the billing statements
6 29 produced to be true and accurate copies of the originals for
6 30 an additional fee not to exceed \$10.

6 31 The bill provides that fees charged pursuant to the bill
6 32 are not subject to a sales or use tax. A provider providing
6 33 the records or images may require payment in advance if an
6 34 itemized statement demanding such is provided to the
6 35 requesting party within 15 days of the request. Upon a timely
7 1 request for payment in advance, the time for providing the
7 2 records or images shall be extended until the greater of 30
7 3 days from the date of the original request or 10 days from the

7 4 receipt of payment.

7 5 The bill provides that if a provider does not provide to
7 6 the requester all records or images encompassed by the request
7 7 or does not allow a patient access to all of the patient's
7 8 medical records encompassed by the patient's request to
7 9 examine the patient's records, the provider shall give written
7 10 notice to the requester or the patient that providing the
7 11 requested records or images would be a violation of the
7 12 federal law.

7 13 The bill defines "records" and "images" to include
7 14 electronic media and data containing a patient's health or
7 15 billing information and "copies" includes patient records or
7 16 images provided in electronic form, regardless of the form of
7 17 the originals and "provider" means any physician or surgeon,
7 18 physician assistant, advanced registered nurse practitioner,
7 19 mental health professional, hospital, nursing home, or other
7 20 person, entity, facility, or organization that furnishes,
7 21 bills, or is paid for health care in the normal course of
7 22 business.

7 23 LSB 6482SZ 82

7 24 rh/rj/5